

VU Research Portal

Compromise and majority rule

Overeem, Patrick

published in

Compromises in Democracy
2020

DOI (link to publisher)

[10.1007/978-3-030-40802-2_3](https://doi.org/10.1007/978-3-030-40802-2_3)

document version

Publisher's PDF, also known as Version of record

document license

Article 25fa Dutch Copyright Act

[Link to publication in VU Research Portal](#)

citation for published version (APA)

Overeem, P. (2020). Compromise and majority rule: How their dynamic affects democracy. In S. Baume, & S. Novak (Eds.), *Compromises in Democracy* (pp. 47-67). (Palgrave Studies in Compromise after Conflict). Palgrave / MacMillan. https://doi.org/10.1007/978-3-030-40802-2_3

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal ?

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

E-mail address:

vuresearchportal.ub@vu.nl



3

Compromise and Majority Rule: How Their Dynamic Affects Democracy

Patrick Overeem

3.1 Introduction

“In the United States, as in all countries where the people reign, it is the majority that governs in the name of the people.” Thus Alexis de Tocqueville (2000: 165), holding that, in practice if not in theory, democracy comes down to majority rule. More than most political thinkers before him, he realized that a democracy is never governed by the people in its entirety, but only by a part, even if the major part, of it. And this equivocation of popular rule with majority rule made him acutely aware of the immense danger of the tyranny of the majority. In a situation of such tyranny, the majority is omnipresent and omnipotent:

What I most reproach in democratic government, as it has been organized in the United States, is not, as many people in Europe claim, its weakness, but on the contrary, its irresistible force. And what is most repugnant to me

P. Overeem (✉)

Vrije Universiteit in Amsterdam, Amsterdam, The Netherlands

e-mail: p.overeem@vu.nl

© The Author(s) 2020

S. Baume, S. Novak (eds.), *Compromises in Democracy*, Palgrave Studies in
Compromise after Conflict, https://doi.org/10.1007/978-3-030-40802-2_3

in America is not the extreme form of freedom that reigns there, it is the lack of a guarantee against tyranny. When a man or a party suffers from an injustice in the United States, who do you want him to address? Public opinion? that is what forms the majority; the legislative body? it represents the majority and obeys it blindly; the executive power? it is named by the majority and serves as its passive instrument; the public forces? the public forces are nothing other than the majority in arms; the jury? the jury is the majority with the right to pronounce decrees: in certain states, the judges themselves are elected by the majority. (2000: 241)

What can be done against this danger? Tocqueville sees a great number of things that ‘temper’ the tyranny of the majority in America, such as administrative decentralization, religion, and several others (ibid., 250–302), but claims that there is “no guarantee against it” and “one must seek the causes of the mildness of government in circumstances and mores rather than in the laws” (ibid., 242). So only contingencies and political culture, as we would say today, are hindrances to majoritarian tyranny. There is no quick-fix.

This is not a very uplifting picture of democracy for its modern adherents. One could wonder whether Tocqueville’s depiction is entirely accurate. Is democracy really tantamount to the rule of the majority? And is the majority’s rule so pervasive and unstoppable as he describes it? Is there not another, more positive side to democratic government as well? A side of checks and balances, equal dignity of all citizens, ordered liberty, and minority inclusion? Are decisions in a democracy not often taken by compromise rather than the imposition of the majority’s will?

In this chapter, I analyze the intricate relationships between majority rule and compromise, in particular. Majority rule can be defined as the principle which says quite simply that, within in a group, the greater number decides. As Novak points out, this still allows for much variation, depending on “(a) the majority threshold (...); (b) the number of persons entitled to vote; (c) the quorum; and (4) [*sic*] the distribution (or weighting) of votes to the participants” (2014: 681). In other words, not all majorities are equal. Novak helpfully distinguishes between “*simple* majority, i.e., more than half of the participants in the vote; *absolute* majority, i.e., more than half of the individuals entitled to vote; *qualified*

majority, which implies a threshold superior to simple majority; *relative* majority or *plurality*, which is not defined as a minimal threshold, but as the fact of receiving more votes than all the other options” (p. 681). So the apparently simple idea that ‘the greater number decides’ allows for various answers to questions like: number of what and greater than what?

Compromise, in its most basic sense, can be understood as an agreement on a suboptimal outcome between two or more actors achieved through mutual concessions. This concept also implies four elements that are arguably present in every compromise, namely (a) an underlying and ongoing conflict; (b) points of partial agreement; (c) mutual concessions during the negotiations leading to the compromise; and (d) mutual consent to the ultimate agreement. Put more graphically, a compromise is always a midpoint between full conflict (disagreement) and full consensus (agreement) between all involved actors and between full concession (disagreeing) and full consent (agreeing) by each involved actor—with the midpoint tilting more toward one end of both dimensions or toward the other (Overeem 2016). Compromises vary in other ways, too, for instance with regard to the motives for striking them. Some are more ‘rational’ or strategic, only serving the actors’ own interests, while others are more ‘reasonable,’ based on a shared understanding of the issues at stake and serving common ends (Canivez 2011: 100). Other theorists have made similar distinctions, sometimes with slight variations (for instance Cohen-Almagor (2006: 440–445): principled and tactical compromises; and Margalit (2010: 39): anemic and sanguine compromises). But whatever the exact formulation, such differences are always a matter of degree and of little consequence for the argument in this chapter.

Both notions, majority rule and compromise, are generally believed to be core elements of democracy, but they also seem to be squarely at odds with one another (e.g., Dahl 1956: 4; Gutmann & Thompson 2012: 152–160). These diverging intuitions are the starting point of my argument in this chapter. In the subsequent sections, I will first show how majority rule and compromise are both key elements of modern democracy. Then, I argue that they are fundamentally opposed to each other, cornerstones of two different kinds of democracy even (majoritarian and consensus democracy, as Lijphart (1984) has called them), but also that they are often closely related. And, I claim next, particularly where they

go together, the dynamic between them is a threat to democracy. This central claim is then highlighted by a discussion of the case of referendums as a prime manifestation of majority rule and, surprisingly perhaps, political compromises. In the conclusion, I argue that the negative spiral into which the combination of majority rule and compromise leads democracy (especially in cases of referendums but also more generally) can only be reversed by mitigating majoritarianism. Compromises have disadvantages of their own, to be sure, but majority rule remains, as Tocqueville envisaged, the greater problem.

3.2 Majority Rule and Democracy

Although democracy is of course the prime example of an “essentially contested concept” (Gallie 1956), this does not mean that nothing sensible can be said about its meaning. Several key elements may be discerned. Majority rule and compromise are both often regarded as core elements of democracy, albeit in different ways. Majority rule, to begin, seems to belong to the bare essentials of democracy (Dahl 1956). In some form or other, but mostly as what Sartori called “limited majority rule”, it tends to be part of even the thinnest conceptions of democracy, understood in the famous Lincoln formula as “government of the people, by the people, for the people” (1987: 31–38). And it is strongly associated with other key notions of democracy, such as political, legal, and social equality, popular sovereignty, and elective representation. Modern democracy can certainly not be reduced to the majoritarian principle, but neither, it seems, would it mean much without it.

Majority rule is especially regarded as democratic because of its supposed relation with political equality. Grossman and Levin have brusquely declared: “Majority rule treats all individuals as equals” (1995: 788). And Melissa Schwartzberg has recently claimed: “Majority rule may be justified on many grounds, but its most compelling justifications derive from its unique capacity to weigh individual votes, reflecting individuals’ judgments, equally” (2018: 180). Other democratic theorists have shown, however, that these links between majority rule on the one hand and equality on the other are not so close and intrinsic as is often thought

(Novak 2014: 682). The egalitarian principle ('one man, one vote') is not necessarily heeded in majority decisions, as actors may be given unequal numbers of votes (Novak 2014: 682). And the rule that all actors should have the same influence on the decision-making outcome (the so-called anonymity rule; May 1952), holds only for absolute majority decisions, but not for supermajority or simple majority rule. Not only does majority rule lack direct links to equality, it is not inherently democratic either. Majority rule takes place in non-democratic, non-egalitarian settings, too, and democracies can and do have other decision procedures as well. As Novak aptly concludes: "Majority decisions do not entail democracy, and democracy does not entail majority decision-making" (2014: 682). Majority rule is a contingent, not an intrinsic part of democracy.

Still, the association of democracy with majority rule remains strong. It is, as noted, the decision procedure for crowds and democracy is government by crowds. Majority rule also seems the only decision rule that is simple enough to be understood and accepted by the general public. Although conceptually not intrinsic to democracy, it is a normative principle that is part of the common set of democratic aspirations. As Tocqueville observed so incisively, in democratic cultures, the rule of the majority is predominant not only via elections and formal legislation but also via public opinion (2000: 243–245). He claimed: "It is of the very essence of democratic governments that the empire of the majority is absolute; for in democracies, outside the majority there is nothing that resists it" (2000: 235).

3.3 Compromise and Democracy

Just like majority rule, compromise is also recognized as belonging to democracy: "If politics is the art of the possible, compromise is the artistry of democracy" (Gutmann & Thompson 2012: 205). This is not only a matter of culture and 'mindsets', as Gutmann and Thompson have argued, but also of democratic institutions: "the institutional framework of constitutional democracies can be viewed as the institutionalization of compromise-making processes" (Canivez 2011: 104). Though compromise seems inherent to all kinds of politics, it is particularly ascribed to

democratic politics—the assumption being, not implausibly, that compromises are less common in authoritarian and other non-democratic regimes (Dixit, Grossman & Gul 2000: 533).

So compromise is part and parcel of democratic politics, but in a less clear and direct way than majority rule. It is situated more in the periphery than in the core of the semantic field of democracy, so to speak. Indeed, one could say it belongs to a different tradition of conceptualizing democracy. The tradition in which majority rule plays an important role, presupposes that the people is ultimately homogeneous, or at least sufficiently so for everyone to accept the majority decision. Letting the majority decide for the entire political community can, in this view, safely be done because there is no serious risk that the community will fall apart. In the other tradition, however, that of compromise, the people is seen as deeply heterogeneous. Compromise is required to the extent that democracy encompasses and fosters heterogeneity among people with different world views, life styles, and moralities. This is not the same as basing compromise on so-called value pluralism, which is the doctrine, usually associated with Isaiah Berlin, according to which all moral and other values are inherently incompatible and even incommensurable with each other (cf. Martijn Boot's chapter in this volume). That doctrine, whether true or not, does not in itself entail a commitment to a politics of compromise (Overeem 2018; *pace* Bellamy 1999: 93–114; Benjamin 1990: 75–106). The democratic pluralism meant here is much less metaphysical: it is political rather than axiological (as, admittedly, it sometimes also is in Bellamy's and Benjamin's descriptions). It is the notion, grounded in empirical reality and sustained by democratic ideology, that late modern societies are irreducibly and irreversibly pluralistic—multi-cultural, multi-ethnic, and multi-religious—and therefore rife with moral disagreement. In the words of John Rawls: “This diversity of doctrines—the fact of pluralism—is not a mere historical condition that will soon pass away; it is, I believe, a permanent feature of the public culture of modern democracies” (1987: 4). Because this ‘fact of pluralism’ is real and cannot be overthrown without unacceptable amounts of coercion, compromise is essential to democratic politics.

So impressions can easily mislead us: whereas majority rule seems deeply inherent to democracy but on closer inspection can be more or

less detached from it, compromise seems rather contingent but turns out to be more central than expected. However this may be, both are elements of democracy as we know it and as most of us believe it should be. This raises the important question how the two relate to each other. This implies that favoring compromise over majority rule (as I do) is no less democratic than the opposite—it is tapping into another tradition.

3.4 Majority Rule Versus Compromise

Majority rule and compromise may both be part of democracy, but it is easy to see that they are nonetheless opposed in many ways, too. While compromises are inclusive, giving all involved parties at least a share in the outcome of the decision-making process, majority decisions tend to be more exclusive: ‘the winner takes all’. And while compromise-making is typically complicated, slow, and ambiguous, majoritarian decision-making is simple, quick, and unequivocal (Novak 2014: 684). There is also a difference in scale of application: majority rule is a decision-making procedure particularly suited for crowds, while compromise (and, *a fortiori*, consensus or unanimity) better fits much smaller groups (Mansbridge 1980: xii). And last but not least, compromises tend to be made by political elites, whereas majority rule is typically, and for many theorists preferably, performed at the mass level, for instance through elections or referendums.

Because of these and similar differences, democracy scholars (especially Lijphart 1984 and 1999) have argued there are actually two types of democracy: majoritarian democracies and consensus democracies. In the former, majority rule is the central principle, while in the latter compromise—not consensus, the name notwithstanding—is the preferred form of decision-making. In the words of Vatter:

Modern liberal democracies are based on two competing visions of the democratic ideal. On the one hand, the majoritarian principle emphasizes democracy as government by the majority of the people, based on a concentration of power. The consensus principle, on the other hand, promotes the idea that democracy should represent as many people as possible and

provide for multiple checks and balances—thereby limiting the power of the central government while providing for the representation of a broader array of interests. (2009: 125)

This simple categorization is further elaborated with all kinds of institutional and behavioral differences, not all of which are necessarily implicated by the underlying distinction, but which are nonetheless helpful to understand the variety of contemporary democratic governments. And while no pure cases of majoritarian and consensus democracy may exist since all countries tend to be mixtures of both, it is also true that at the most basic level, whenever a concrete political decision has to be made, it has to be done either by majority rule or by compromise (or perhaps some other procedure, such as unanimity rule). The two cannot be used simultaneously.

This fundamental incongruence between majority rule and compromise creates serious tensions in democratic theory and practice. The need to give majorities their say while also protecting minorities, to come to quick and clear decisions while keeping wide support, to take the people as a unified whole and still recognize its plurality—it seems an attractive but impossible endeavor. Democratic governments will understandably try (and claim) to combine the two, but cannot but fail in doing so. And precisely this has serious negative consequences for democracy itself. The present discontent with (representative) democracy and the rise of populist movements in some of the world's most established democracies (the USA, the UK, and several continental European countries) can be understood in light of the unfulfilled promise that these opposing democratic aspirations can be combined. In response, populist voters and their leaders radically choose for one side—majoritarianism, presupposing the homogeneity of the nation—at the cost of the other, thereby endangering the very democratic ideal they seek to preserve. But before we see how that works, it first has to be acknowledged that majority rule and compromise also have surprisingly strong interrelations.

3.5 Ties Between Majority Rule and Compromise

Given the clear contrasts between majority rule and compromise, it may seem counterintuitive to argue that there are also close ties between them. For a full understanding of their dynamic, however, their interrelations need to be highlighted as well. Most elementarily, the two notions have some structural similarities. They both play with the contrast between plurality and unity. Majority rule presupposes not only a difference between majority and minority, but also their unity, both being parts of a larger whole: majority rule could not function if both groups did not regard themselves as part of a wider community, for instance a nation-state. It requires a commitment to that community and the (implicit) promise not to secede from or rebel against it. This goes for compromise as well: parties in a compromise are typically opponents, but they are also linked to each other, even when they rather would not. Further, majority rule and compromise are both forward-looking. Although chosen because no better solution has appeared feasible in the past, their main thrust is prospective. Majority rule only works when the minority accepts the decision because it expects to become the majority sometime in the future. Precisely for this reason, decisions are often taken by oversized majorities (Schwartzberg 2018: 182). This is even more explicit for compromises. They involve, as etymology suggests, always a promise: “Compromises emerge because people recognize that they are engaged in a long-term endeavor. ... If we had no expectation of future interactions, and no shared goal apart from the gains to be had from a single trade, then we would have minimal incentives to compromise rather than simply to bargain as one would in a one-shot game” (Schwartzberg 2018: 171). Hence, compromises, like most majority decisions, are always provisional, vain attempts to freeze time and to decide ‘for the time being’, with each involved party hoping to reach a better outcome later.

Secondly, and less obviously, one can say that majority rule itself is a kind of compromise, albeit on the decision procedure rather than the substance of the issues at hand. A group chooses majority rule when it can neither achieve full consensus nor allow hegemons, but still wants to

reach a decision. Under such circumstances, group members often find majority rule (in some form) an acceptable compromise. They forsake, at least temporarily and partially, their own claims to truth and justice and jointly agree to a third option, which translates their qualitative differences into a quantitative one: if we cannot agree, let the numbers decide, and we promise to stand by the outcome. Such ‘quantitative reductionism’ can obviously obfuscate the moral character of the values at stake (cf. Martijn Boot’s chapter in this volume), but it is a compromise if anything. Since no substantive agreement is found, but only a procedural one, such a compromise can be expected to break apart very quickly, but as we know from examples such as parliamentary elections and referendums but also the US Supreme Court (Waldron 2016: 246–273), institutionalization can make majoritarian forms of decision-making highly durable. Precisely because this kind of compromise deflects attention from substance to procedure, actors may be more willing to uphold it. Even those in the minority keep hopes that the procedure will serve them on a next occasion.

Majority rule as a decision rule can, however, also be linked up with more substantive compromises—with the effect working in both directions. On the one hand, compromise often enables majority rule: compromises are necessary to create majorities in the first place (Baume 2017: 79–80). In Bellamy’s words, “compromise and majority rule often go together, with the former making possible and legitimising the latter” (2018: 316). Actual rule by majorities would often be impossible without *ex ante* compromises, for instance within and between political parties. Hence, Weinstock has argued that ‘big tent’ political parties—the kinds of large political parties that tend to be generated by simple plurality electoral systems, as in the USA and the UK—may be particularly appropriate sites for deliberation aimed at compromise that enable majorities in Congress and Parliament to govern (2018: 188). This suggests that compromise can be pivotal not only in consensus democracies but in majoritarian democracies as well. Indeed, according to Schwartzberg even more so: “Paradoxically, majority rule may be more likely to generate compromise, at least in the long run, than consensus-seeking institutions” (2018: 172). Precisely because of the temporary character of many majority decisions (particularly of simple majority decisions; usually not

those of supermajorities) actors will be compromise-ready, she argues: “Under simple majority rule, policy changes are not once-in-a-generation, and so the prospect of future revisions may both induce compromise *ex ante* and reduce the sense of loss *ex post*” (Schwartzberg 2018: 182). This will, however, very much depend on the topic and the constitutional and political circumstances at hand.

On the other hand, majority decisions often generate *ex post* compromises. Every majority decision creates its own losers and one of the big questions of democratic politics is why they would accept the outcome of an election or another decision-making procedure: the puzzle of so-called loser’s consent (Anderson et al. 2005). There may be many factors to explain this phenomenon—institutional, cultural, and tactical—but one of them definitely is also that after majority decisions, compromises tend to be made with regard to their interpretation and implementation. So we should not think of majority decisions (nor of compromises, for that matter) as discrete events; they are part of a stream of decisions and continuous modifications. The blow of their impact tends to be softened by compromises that are not so much political as well as legal, administrative, and social. These compromises are typically made behind the scenes, outside the limelight of the mass media. After the people or its representatives have decided on, for instance, exiting the European Union, building an airport, legalizing the use of cannabis, or any other topic, it is up to civil servants and other experts to hammer out the precise details of the policies required. This often requires painstaking negotiations to arrive at workable compromises that still align recognizably with the majority decision.

So we see that majority rule and compromise are opposed but also often go together. Precisely this combination leads to problems because the *ex ante* and *ex post* compromises surrounding majority decisions are often not politically recognized. The general public only sees the majority decision (an election outcome, a parliamentary vote, and a referendum result), without understanding how the winning majority came into being and without knowing what happens with the majority decision later. It believes that ‘the majority has spoken’ and that its will should be executed right away, only to discover that the resulting policy is complex, slow, and ambiguous. This can lead to incomprehension and alienation

(what the Germans call *Politikverdrossenheit*) and ultimately affect the quality of and support for constitutional democracy itself. This potentially explosive dynamic, I will now argue, particularly holds true for the majoritarian institution par excellence: referendums.

3.6 Referendums

Referendums tend to be defended mainly with arguments about public participation and deliberation: “a referendum can play a crucial role in catalyzing public debate, in focusing the attention of everyone on the issues at hand, in engaging ordinary citizens to inform themselves on the core issues being debated” (Leydet 2004: 255). They also have important drawbacks, however. Leydet, although a qualified advocate of referendums herself, mentions three of them: referendums lead to division and fragmentation within the political community; they are “structurally polarizing: to a very complex set of propositions that address diverse and difficult issues, citizens are faced with only two options: Yes or No”; and “a referendum campaign is relatively short; too short to act as a ‘learning process’ through which the different sections of a divided society might come to better understand and appreciate the claims made by others and the delicate compromises needed in order to acknowledge and, to some extent, satisfy these claims” (2004: 253). In short, referendums engage citizens, but they also divide people, simplify issues, and precipitate decisions. Here I will concentrate on Leydet’s last point: the ways in which referendums affect the politics of compromise.

Referendums are often presented as an alternative to compromises. The latter tend to be hammered out by professional elites, detached from the wider public, which leads to outcomes that often reflect the politically opportune more than what is substantially optimal or democratically desirable. A referendum, by contrast, if it is well designed (Cheneval & el-Wakil 2018), not only involves citizens but also brings decisions and policies more in line with their interests and preferences. It would be wrong, however, to think that referendums mean the end of compromise. In fact, like all forms of majority rule, they induce politicians to make all kinds of compromises both beforehand and afterwards.

Ex ante, the mere possibility of a referendum influences the process of compromise-making. As Leydet has argued: “If the negotiators know in advance and work with the assumption that any negotiated agreement will be submitted to a national referendum, then this awareness will discipline their bargaining and direct them to an agreement more likely to stand the test of public debate” (2004: 245). A bit later, she explains:

negotiators laboring under the shadow of a referendum would strive to ensure that, both in form and in content, the result of their discussions could be justified to a majority or the relevant majorities of citizens. They would thus have to search for the best available equilibrium between what they can agree on and what the public(s) can be persuaded to accept. Negotiators would be encouraged not to lose sight of the various audiences for their agreement: at the very minimum, the particular constituency they represent and the public as a whole. (2004: 249)

Usually, this anticipatory effect will be applauded as democratic and promoting responsiveness to the desires of the electorate. It can, of course, also distort the quality of the compromise: negotiators can aim at an agreement that is sufficiently popular to pass rather than at a substantially (legally, economically, technologically, or otherwise) better one.

Two caveats are due, however. Firstly, in many political systems compromise is chosen not to enable a majority decision, but rather to prevent it. Existing institutions of majority rule can spur anticipatory compromises, so that majority decisions, including referendums, do not even have to take place (Schwartzberg 2018). This effect has been shown, for instance, for the Council of the European Union, where consensus is sought and compromises are struck in order to prevent voting (Novak 2013). It also applies to cases with referendums. Article 42 of the Danish constitution, for example, which is meant to protect minorities by giving them a relatively easily accessible opportunity to initiate a referendum against unwelcome passed bills, has led to a strong political culture of compromise-making—so much so, that the provided-for type of referendum has taken place only once, in 1963 (Forestiere 2008: 456–457, 461–463). This does not mean that article 42 is ineffective, of course, but

that the Danes prefer to reach their goal—protecting the interests of minorities—by circumventing majoritarianism and opting for more consensual forms of politics instead. Even in referendum-prone Switzerland, it has worked in this way:

In the quest to minimize the risks harbored by direct democracy, the informal search for a broadly supported compromise has required the formation of broadly supported multi-party governments, which make the important decisions. Extensive power sharing in the Swiss government is intended to produce solutions acceptable to a sufficiently large majority in parliament, for the risk of optional referendums and popular initiatives to be reduced. (Vatter 2009: 146)

In short, the mere ‘threat’ of a referendum can induce power sharing and compromise.

Secondly, the unifying effect of referendums should not be exaggerated. It seems true that referendums force politicians to seek support outside of their own party and constituency and that they thus can “work as a strong incentive towards coalition-building and against fragmentation” (Leydet 2004: 255). But we should not forget that this decrease of fragmentation comes at the cost of polarization: coalitions are indeed built, but only to create two large camps (Yes vs. No). As the campaign proceeds, the chances that these two will come closer become smaller rather than bigger. Again, compromises are made *ex ante* to achieve a decisive majority, not to provide substantive agreement on the issues at hand.

Referendums also typically lead to *ex post* compromise-making. In a referendum, voters are presented with a simple ballot (yes/no), which creates the illusion of an unequivocal outcome: the majority has pointed out the direction to go. But as we know since the Brexit referendum if not long before, things are rarely so clear-cut. Once the dust has settled, inevitably questions arise like: was there a more or less cohesive majority, can we know who were its members (and who not), and can we say what exactly it wanted? Usually, the answer is a threefold ‘no’. As Bellamy succinctly put it: “Within pluralist societies, appeals to a popular majority are largely mythical” (2018: 318; referring to Weale 2018). And the myth is not even innocent: “An appeal to a collective popular will that

transcends [the] plurality of individual and group wills, as in a referendum, becomes almost by definition dominating” (Bellamy 2018: 318). Referendums, at least outside Switzerland and California, are such marked events in the political life of a nation, that ignoring or diluting the vote is politically impossible. And still, the outcome has to be modified if not diluted in order to be turned into legally, economically, politically, and socially acceptable legislation. Again, Brexit is a case in point: it shows very well that compromise-making between the involved actors (*in casu* the EU and UK, but also various actors within the UK and even within the Conservative Party) is inevitable, not only beforehand, but also after a referendum has been held. And this is not the exception but the rule. In all modern democracies, even those that have much experience with referendums like the polities just mentioned, referendum days are majoritarian intervals in the ongoing politics of compromise rather than vice versa. The combination of and contrast between them creates the dangerous dynamic highlighted before: as the majoritarian momentum of a referendum heightens expectations, the inevitable politics of compromise beforehand and afterwards can only create disappointment and resentment. This dynamic occurs with regular elections and parliamentary votes already, but even more so with the marked event of referendums. Rather than instruments of engagement, they thus easily become sources of alienation.

3.7 Mitigating Majoritarianism

While it may be true that majority rule is a minimum requirement of democracy, arguably the quality of a democracy depends more on how it treats its minorities than on whether majorities can have their sway. Indeed, there is every reason to be distrustful of majorities and thus to be skeptical of majority rule as a guiding principle of good government. As Tocqueville eloquently put it:

What therefore is a majority taken collectively, if not an individual who has opinions and most often interests contrary to another individual that one names the minority? Now, if you accept that one man vested with

omnipotence can abuse it against his adversaries, why not accept the same thing for a majority? Have men changed in character by being united? Have become more patient before obstacles by becoming stronger? As for me, I cannot believe it; and I shall never grant to several the power of doing everything that I refuse to a single one of those like me. (2000: 240)

In regard to the protection of minorities, compromise generally does better than majority rule (Bellamy 2018: 315). Surely, compromises can be very harmful for minorities as well, but overall a politics of compromise tends to be less dominating and to better track the interests of a wide range of stakeholders than majoritarian politics. Even two centuries after Tocqueville, the danger of the tyranny of the majority is never far away: “majoritarian decision-making risks creating persistent minorities of one or more segmented groups of citizens” (Bellamy 2018: 315). In order to reduce this danger of majoritarian tyranny, especially in segmented societies, Bellamy proposes two approaches:

Here we may have reason to at least grant minorities a proportional voice in the community, so they are not consistently outvoted on collective matters (...), possibly by allowing a degree of self-government to different minority communities, or—more demanding—to find ways whereby their concerns can be integrated into common policies, especially in areas where there is disagreement as to what is ‘completely undesirable’. (2018: 317)

Of these two approaches—self-government (arrangements in which minorities are granted some degree of autonomy) and integrative compromises (arrangements in which minorities and the majority share their interests to find a common solution)—it is clear that Bellamy prefers the latter: he hopes for a “willingness to find integrative compromises that recognize each citizen’s entitlement to be considered an equal member of the deliberative community” (2018: 318). Now, it is hard to disagree with the attractiveness of that solution, but one could be rather skeptical about its feasibility and durability. Integrative compromises, particularly for difficult political and moral issues (such as abortion, immigration, and markers of national identity), will be hard to find and probably not

last very long. For this reason, besides the fact that it also more congruent with Tocqueville's view, Bellamy's other approach deserves more credit than he gives it. Emboldening minorities can be done in various ways. One is to increase the number of issues for which supermajorities are required. This is a widely used and time-tested—although certainly not perfect—way to protect minority rights (Schwartzberg 2014). Securing that laws have wide acceptance and not just narrow majority support has both practical and principled value (Wendt 2018). Self-government and subsidiarity—via administrative decentralization, devolution, and the like—would be even better. It recognizes, realistically, that in pluralistic societies the idea that the people has a singular will which can be represented through majority decisions is a phantasy (Bellamy 2018: 318).

Besides empowering minorities, there are also many ways to directly mitigate majoritarianism and reduce the 'adversary' character of contemporary politics (Mansbridge 1980). One can think of increasing the number of institutions and practices typical of consensus democracy and of being very restrictive with referendums. Now I agree with Bellamy that one should assess political institutions such as referendums not categorically and not just by themselves, but as part of the 'institutional mix' characterizing a particular political system (2018: 312). My limited claim here is that we should not favor referendums out of discontent with the politics of compromises. Sure, there is "an unavoidable disjunction between the kind of compromise agreement that can come out of complex intergovernmental negotiations and the type of outcome that a majority of citizens might be made to support" (Leydet 2004: 235). But referendums are no solution for this undeniable problem. They rather make things worse, raising expectations to a level at which they can never be satisfied and only leading to disappointment: on the part of the losing minority, obviously, but also on the part of the majority when its vote is diluted in the policy-making process. Again, Brexit is the case that comes most readily to mind, but experiences with referendums in France, Denmark, Greece, the Netherlands, and various other countries show, I believe, the same trend of raised expectations and deepened disappointment. In order to break this negative spiral and thus, in the end, to preserve constitutional democracy, majoritarianism should, be considerably mitigated.

3.8 Conclusion

This chapter has shown how in modern democratic politics majority rule and compromise are related. I have drawn on Alexis de Tocqueville because I believe the thought of that great theorist of democracy can help us sense where modernity's favorite regime is most jeopardized. We have seen that compromise and majority rule are opposed, but also closely related in various ways. And precisely the dynamic of back-and-forth between them poses dangers for the quality of constitutional democracy in general and for freedom in particular—dangers which, as Tocqueville already saw, are best averted by mitigating majority rule and strengthening minorities.

In *Democracy in America*, Tocqueville admittedly deals hardly with compromise. For him, democracy is the unmitigated realization of the will of the majority (which is why he regarded the tyranny of the majority its greatest threat). He did not perceive democracy (at least as he had seen it in America) as full of compromises, nor did he consider compromise itself as a way to 'temper' majority rule. Perhaps he underestimated the heterogeneity of democratic society; perhaps he regarded a politics of compromise as too 'elitist' to be sustainable in democratic times. However that may be, near the end of the second volume, in the famous chapter on 'What sort of despotism democratic nations have to fear', he meaningfully speaks of modern democracy as a "sort of *compromise* between administrative despotism and popular sovereignty" (2000: 662; emphasis added). This seems an important example of his (critical) use of the term, but one can wonder whether this is a compromise at all. It is evidently not the kind of compromise resulting from negotiations between disagreeing parties. It is not even a compromise in which the elements go at the cost of each other; it rather seems an amalgam in which both elements are realized to the highest possible degree. The very combination of majority rule (to which for Tocqueville, as we have seen, popular sovereignty was tantamount) and compromise (epitomized by the administrative despotism he criticizes) creates a dynamic that causes severe risks to the quality of constitutional democracy in terms of democratic legitimacy, government effectiveness, and citizen trust. We see this happening,

I believe, in our time. The compromises struck to create majorities, to prevent majority decisions, and to mitigate their impact can all be easily seen as elitist gaming, if not as democratic betrayal. In an ever-growing democratic frenzy of majoritarianism, they are regarded as signs of administrative or even political despotism which can be legitimately overthrown—if, at least, democratic citizens have the revolutionary spirit to do that.

Bibliography

- Anderson, C. J., Blais, A., Bowler, S., Donovan, T., & Listhaug, O. (2005). *Losers' Consent: Elections and Democratic Legitimacy*. Oxford: Oxford University Press.
- Baume, S. (2017). What Place Should Compromise Be Given in Democracy? A Reflection on Hans Kelsen's Contribution. *Négociations*, 1(27), 73–89.
- Bellamy, R. (1999). *Liberalism and Pluralism: Towards a Politics of Compromise*. London: Routledge.
- Bellamy, R. (2018). Majority Rule, Compromise and the Democratic Legitimacy of Referendums. *Swiss Political Science Review*, 24(3), 312–319.
- Benjamin, M. (1990). *Splitting the Difference: Compromise and Integrity in Ethics and Politics*. Lawrence: University Press of Kansas.
- Canivez. (2011). Democracy and Compromise. In D. M. Gabbay, P. Canivez, S. Rahman, & A. Thiercelin (Eds.), *Approaches to Legal Rationality: Logic, Epistemology, and the Unity of Science* (pp. 95–118). Dordrecht: Springer.
- Cheneval, F., & A. el-Wakil. (2018). The Institutional Design of Referendums: Bottom-Up and Binding. *Swiss Political Science Review*, 24(3), 294–304.
- Cohen-Almagor, R. (2006). On Compromise and Coercion. *Ratio Juris*, 19(4), 434–455.
- Dahl, R. A. (1956). *A Preface to Democratic Theory*. Chicago: The University of Chicago Press.
- Dixit, A., Grossman, G. M., & Gul, F. (2000). The Dynamics of Political Compromise. *Journal of Political Economy*, 108(3), 531–568.
- Forestiere, C. (2008). New Institutionalism and Minority Protection in the National Legislatures of Finland and Denmark. *Scandinavian Political Studies*, 31(4), 448–468.
- Gallie, W. B. (1956). Essentially Contested Concepts. *Proceedings of the Aristotelian Society*, 56, 167–198.

- Grossman, J. B., & Levin, D. M. (1995). Majority Rule, Minority Rights. In S. M. Lipset (Ed.), *The Encyclopedia of Democracy* (Vol. II, pp. 787–793). Washington, DC: Congressional Quarterly.
- Gutmann, A., & Thompson, D. (2012). *The Spirit of Compromise: Why Governing Demands It and Campaigning Undermines It*. Princeton: Princeton University Press.
- Leydet, D. (2004). Compromise and Public Debate in Processes of Constitutional Reform: The Canadian Case. *Social Science Information*, 43(2), 233–262.
- Lijphart, A. (1984). *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-Two Countries*. New Haven, CT: Yale University Press.
- Lijphart, A. (1999). *Patterns of Democracy: Government Forms & Performance in Thirty-Six Countries*. New Haven: Yale University Press.
- Mansbridge, J. J. (1980). *Beyond Adversary Democracy*. Chicago: University of Chicago Press.
- Margalit, A. (2010). *On Compromise and Rotten Compromises*. Princeton: Princeton University Press.
- May, K. O. (1952). A Set of Independent, Necessary and Sufficient Conditions for Simple Majority Decision. *Econometrica*, 20(4), 680–684.
- Novak, S. (2013). The Silence of Ministers: Consensus and Blame Avoidance in the Council of the European Union. *Journal of Common Market Studies*, 51(6), 1091–1107.
- Novak, S. (2014). Majority rule. *Philosophy Compass*, 9(10), 681–688.
- Overeem. (2016). Compromise. In A. Farazmand (Ed.), *Global Encyclopedia of Public Administration, Public Policy, and Governance*. Cham: Springer. Retrieved from http://springer.iq-technikum.de/referenceworkentry/10.1007/978-3-319-31816-5_2773-1, 8 Oct 2019.
- Overeem. (2018). Compromise, Value Pluralism, and Democratic Liberalism. In C. F. Rostbøll & T. Scavenius (Eds.), *Compromise and Disagreement in Contemporary Political Theory* (pp. 115–129). New York/London: Routledge.
- Rawls, J. (1987). The Idea of an Overlapping Consensus. *Oxford Journal of Legal Studies*, 7(1), 1–25.
- Sartori, G. (1987). *The Theory of Democracy Revisited*. Chatham: Chatham House.
- Schwartzberg, M. (2014). *Counting the Many: The Origins and Limits of Supermajority Rule*. Cambridge: Cambridge University Press.
- Schwartzberg, M. (2018). Uncompromising Democracy. In J. Knight (Ed.), *Compromise* (pp. 167–185). New York: New York University Press.

- Tocqueville, Alexis de. (2000). *Democracy in America* (Translation and edition H. C. Mansfield & D. Winthrop; first ed. 1835–1840). Chicago: The University of Chicago Press.
- Vatter, A. (2009). Lijphart Expanded: Three Dimensions of Democracy in Advanced OECD Countries? *European Political Science Review*, 1(1), 125–154.
- Waldron, J. (2016). *Political Political Theory: Essays on Institutions*. Cambridge, MA: Harvard University Press.
- Weale, A. (2018). *The Will of the People: A Modern Myth*. Cambridge: Polity.
- Weinstock, D. (2018). Compromise in Deliberative Constitutionalism. In R. Levy, H. Kong, G. Orr, & J. King (Eds.), *The Cambridge Handbook of Deliberative Constitutionalism* (pp. 181–190). Cambridge: Cambridge University Press.
- Wendt, F. (2018). Compromise and the Value of Widely Accepted Laws. In C. F. Rostbøll & T. Scavenius (Eds.), *Compromise and Disagreement in Contemporary Political Theory* (pp. 50–62). New York & London: Routledge.